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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,597	03/13/2001	Carolyn W. Hall	HALL-101	4573
7590		01/06/2004	EXAMINER	
Robert K. Tandler		CHRISTMAN, KATHLEEN M		
65 Atlantic Avenue		ART UNIT		
Boston, MA 02110		PAPER NUMBER		
		3713		

DATE MAILED: 01/06/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/808,597	Applicant(s) HALL ET AL.	
	Examiner Kathleen M Christman	Art Unit 3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

In response to the amendment filed 10/22/2003, claims 25-44 are pending.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 25-38, 43, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 6338628 B1) in view of Fargano (US 6257896). The broadly claimed method for behavioral modification in the learning process may be interpreted as the personal training and development delivery method of Smith. Smith teaches a method including the steps of: providing at an Internet Site a course of instruction having a number of guided practice activities to be performed by an individual, each guided practice including information on how to modify behavior (see col. 14: 60 - col. 15: 6); and automatically transmitting the guided practice activity to the individual at a pre-selected times, thus to provide the individual with an active learning experience through the guided practice activity pushed from the Internet site at pre-selected times during the day (see col. 13: 54-55 and col. 14: 43-44), as in claim 25. Providing the individual with additional guided practices from the Internet site (claim 28) is taught at col. 14: 50-54. Preceding a guided practice activity with a mini-lesson (claims 30 and 44) is taught by the "training" materials of Smith, as shown in col. 13: 19-23. Providing a device to which the guided practice activity is

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transmitted (claim 31) where the device is a computer (claim 32) is shown in col. 14: 61-62. The guided practice activity being designed to improve competency in the workplace (claim 35) is taught at col. 11: 58. Regarding the system of claim 43, Smith teaches a website coupled to the internet (see Figure 6); a course of study available at said website including guided practice activities, each guided practice activity including information on how to modify behavior (see col. 14: 60 - col. 15: 6); means for automatically transmitting to the individual said guided practice activities at predetermined times during the day (see col. 13: 54-55 and col. 14: 43-44); and a device available to the individual and coupled to the Internet for receiving the automatically transmitted guided practice activities and prompting the individual to take action in the form of practice (col. 14: 61-62).

Smith does not specifically teach: having the individual transmit back to the internet site responses to the initial guided practice activity; transmitting a remediative guided practice back to the individual based upon the responses to the transmitted initial guided practice activity (claim 25 and similar language in claim 43); the guided practice activities are transmitted to the individual at times pre-selected by the individual such that the guided practice activities are not disruptive (claim 26); providing acknowledgement of receipt of a guided practice activity and transmitting the acknowledgement back over the Internet to the Internet Site (claim 27); the guided practice activities from the Internet site are time limited so as not to interfere with the normal tasks of the individual (claim 29); the automatic transmission is at a pace so as not to disrupt the individual during his workday (claim 33); and the guided practice includes experiential learning in which the individual is prompted to respond with some action (claim 34). Fargano teaches these limitations at col. 3: 10; col. 5:65 – col. 6: 3; col. 1: 36-40 and col. 5: 9-10; col. 3: 10; col. 4: 59-61; col.3: 35; and col. 7: 15-22, respectively. It would have been obvious to one of ordinary skill in the art to include the adaptive assessment system of Fargano system into the Smith system so as to assure that the user is learning and understanding the materials delivered to the user, as is the common use of these adaptive type systems. Further, since Smith does not specifically teach the scheduling of the delivering of information in method/system one of ordinary skill in the art would be forced to seek other systems. As such it would be obvious to one of ordinary skill in the art to use a delivery system such as that taught by Fargano to deliver the educational materials of Smith so as to

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provide an "ongoing skill building method and system implemented in such a way that the training subject is not overburdened by the ongoing training process". (Fargano Background)

4. Claims 36-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (US 6338628 B1) in view of Fargano (US 6257896 B1) further in view of Brown et al (US 5879163) or Casey-Cholakis et al (US 6438353 B1) or Tsumori et al (US 6435880 B1). Smith fails to particularly teach that the guided practice activity is an athletic activity (claim 36), where the athletic activity is golf (claim 37), designed to empower women to react to specific workplace encounters with positive results (claim 38), designed to improve the response of the individual to health related issues (claim 39) wherein the health related issues in controlling the weight of the individual (claim 40), addiction (claim 41) or the taking of medication (claim 42). Each of the limitations is a variation of the subject matter presented to the user upon receipt of the guided practice. Brown et al teaches using an education system to modify behavior for various medical conditions. Tsumori et al teaches using an educational system for modifying behavior and teaching a user various athletic activities, including golf. Casey-Cholakis et al teaches using an educational system to educate a student on office policies, such as sexual harassment and proper responses to such. Each of these systems show that educational content may be created to teach a plurality of topics. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the educational content of any of the references within either the Smith or the Fargano system so as to provide a plurality of topics for education.

Response to Arguments

5. The rejections under 35 U.S.C. §112, second paragraph have been withdrawn in view of the amendments to the claims made 10/22/2003.

6. Applicant's arguments filed 10/22/2003 have been fully considered but they are not persuasive. Applicant's arguments are directed to the newly added limitations of a "two-way communication process", receiving a response to the user and providing remediation to the user based upon the response. Applicant has argued that Smith does not include these limitations. The examiner agrees with this

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interpretation of the Smith patent. The examiner disagrees with the assertion that the other references, particularly Fargano, do not include these features, see the rejection under 35 U.S.C. §103(a) with Smith in view of Fargano above. The applicant had further made the general statement that "Fargano is intrinsically different" and "he cannot deliver the claimed process; nor can the claimed process deliver his process". No proof of these allegations has been submitted.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Christman whose telephone number is (703) 308-6374. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa Walberg can be reached on (703) 308-1327. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


Kathleen M. Christman


Teresa Walberg
Supervisory Patent Examiner
Group 3700